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THOMAS RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1876

DEL RIO DISTRIBUTORS, INC., *Petitioner,*

VS.

ADOLPH COORS COMPANY, *Respondent.*

**REPLY BRIEF OF DEL RIO DISTRIBUTORS, INC.,
TO BRIEF OF THE ADOLPH COORS COMPANY IN
OPPOSITION TO THE PETITION FOR
WRIT OF CERTIORARI**

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Petitioner*

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Petitioner, Del Rio Distributors, Inc. (Del Rio), files this reply brief to respond to certain arguments and statements contained in the brief submitted by Respondent, Adolph Coors Company (Coors).

STATEMENT OF THE CASE

1. Coors states that Del Rio has erroneously characterized itself as Coors' exclusive distributor in its designated territory, referring to wording in Coors' distributorship agreement, giving Coors the right to appoint additional distributors within the designated

territory. However, the fact remains that throughout the time Del Rio acted as Coors' distributor, Del Rio was the only Coors distributor located in or functioning in such territory, making it, in fact, the exclusive distributor for Coors in that territory.

2. Coors asserts that managerial problems existed in Del Rio's distributorship, which warranted its termination; nevertheless, Del Rio was terminated at a time when its sales had reached an all-time high and it had first begun to turn a profit.

ARGUMENT

I. Del Rio's Claim Asserted Here Is Exclusively Federal

Del Rio is not here seeking to assert a pendant claim under the Texas statutes. It is not asking that the federal issue be ignored and the case be re-litigated on state law, as Coors asserts at page 7 of its brief. Not since the trial judge refused Del Rio's request to enlarge the pre-trial order, to reassert its pendant claim under the state statutes, has Del Rio sought any relief under state law. The relief sought is wholly under Section 1 of the Sherman Act and the question before this Court is the effect of the Texas antitrust prohibition against vertical territorial restraints upon the rule of reason under the Sherman Act. Del Rio is not seeking to enshrine state law over federal law but is rather insisting that the state law and policy must constitute the overriding circumstance in determining the Sherman act rule of reason question. Del Rio says simply that a restriction on trade and commerce that constitutes a felony where committed, cannot be deemed reasonable.

Nor does the fact that Del Rio waived its pendant claim under the Texas act lessen the effect of such act upon the rule of reason determination under the Sherman Act, and the court of appeals holding that Del Rio waived its claim under the Texas antitrust law does not meet the question of what effect the Texas law has upon the reasonableness of the trade restriction under the federal act.

Coors asserts that Del Rio produced no evidence relative to a violation of Texas law and that the state statutes and constitution were not included in the trial record. However, the only evidence required of a violation of the state law is the fact of the territorial restriction, admitted by Coors; and Del Rio, by trial brief, brought to the trial court's attention the Texas law condemning the same.

II. Texas Law Clearly Condemns Coors Vertical Territorial Restrictions

In its brief, Coors has attempted to obscure Texas' antitrust prohibition against vertical territorial restrictions by cloaking over it, Texas' further and additional antitrust prohibition against the granting of exclusive territories to a distributor. Under Texas law, both practices are condemned and it is a violation of the Texas antitrust law to *either* impose territorial restrictions on a purchaser, or grant an exclusive territory, and the proscription of territorial restrictions is independent and separate from Texas law's condemnation of exclusive territories. To do either violates the Texas antitrust law.

CONCLUSION

Del Rio prays that its petition for a writ of certiorari be granted.

Respectfully submitted,

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